IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-888

JAMES D. ROWBOTHAM, Petitioner,

v.

AMERICAN AIRLINES,

INC., et al, Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

JAMES D. ROWBOTHAM

4028-14 Farm Hill Blvd.

Redwood City, Calif.

94061

(415) 365-7910

Petitioner In Pro Per

TOPICAL INDEX

Statement of Case 1

Argument 6

A. The Proper Administration And Enforcement Of The Railway Labor Act Requires The Grant Of Certiorari Here. 6

B. A Jury Trial Is Required On The Issue Of Whether Allied Pilots Association Breached Its Duty Of Fair Representation. 7

C. Failure To Publish An Appellate Decision Does Not Make It Any Less In Conflict. 8

Conclusion 9

Certificate of Service 11

CITATIONS

Vaca v Sipes, 386 U S 171 (1967) 6,8

STATUTES

Section 204, TITLE II,
of the Railway Labor Act .....4,5,App. A

STATEMENT OF CASE

Respondents' "Statement of Case" must be corrected in order to bring the material facts into proper context.

On June 7, 1973, petitioner was permanently discharged by American Airlines(American). In order to obtain reinstatement, petitioner had to first receive from American the contractually required prior written notice of dismissal under Section 27(A) of the Collective Bargaining Agreement(Agreement). Contractually, only after receipt of such written notice could petitioner dispute the discharge; however, American never furnished the petitioner with such notice.

Section 26(D)(1) of the Agreement also required written notice of medical concern from American:

> "The Company shall notify the pilot in writing, specifying the nature and extent of its concern (that his health or physical condition is appreciably impaired, Section 26 (D))"

That notice was never furnished petitioner, either.

The October 5, 1973 letter from American's Dr. Lederer to petitioner relied upon by respondents was not a letter of medical concern under Section 26(D), as the respondents infer. Respondents' Brief in Opposition pages 1-2 (RB,1-2). Such letter also contained:

> "We call your attention to a letter addressed to me dated August 21, 1973 sent by certified mail, regarding some action which you wanted taken under Section 26, paragraph D of the Pilot Agreement, We answered that letter, by certified mail, on August 28, 1973 telling you that we were still awaiting the medical review made on you by Dr. Benjamin Boshes...."

Four years later on August 10, 1977, Dr. Lederer testified:

> "Q. Did you send Rowbotham any letter of concern following the Boshes examination?
> A. No, I did not."
> (Lederer depo. 234;19-21)

The sentence, from the October 5, 1973 letter, quoted from by respondents (RB,1):

> "...permanently disqualified from flying status because of a convulsive brain disorder."

was introduced by this clause:

> "On September 13, 1973, I certified to the Insurance Department of American Airlines, specifically, Mr. Dan Desmond, Director of Insurance, that you were...."

By Dr. Lederer's own admission, the October 5, 1973 letter to the petitioner was not a letter of medical concern required by Section 26(D)--American considered the petitioner to be permanently discharged.

Reinstatement under the five year medical reinstatement provision of the Agreement, referred to by respondents (RB,4), would still have first required American to comply with Section 26(D) by furnishing petitioner with the required letter of medical concern. American repudiated all reinstatement under the five year medical reinstatement provision--Allied Pilots Association (Allied).did not object. See Petition pages 10-11, 20:

> (Allied) did not challenge statements by American's Corporate Medical Director that American would not furnish petitioner with the required notice of medical concern and that American would never allow petitioner to be medically evaluated by a three doctor panel as required by the Agreement. (Petition, 10-11)
>
> American repudiated all reinstatement procedures, and American's Corporate Medical Director and its Director of Pilots Contracts told Allied that the contractual medical evaluation procedures would never be allowed in petitioner's case--Allied did not protest.(Adjustment Board transcript)(Petition, 20)

Respondents infer that verbal allegations made to the American Airlines Pilots' System Board of Adjustment (Adjustment Board) by Allied's attorney Mr. Fisher and demands verbally made by the petitioner constitute proper dispute submission. (RB,3-4)

Section 29(A) of the Agreement establishes the Adjustment Board in compliance with Section 204, TITLE II, of the Railway Labor Act (Act). Section 29(A) limits the Adjustment Board's jurisdiction to disputes "properly submitted to it"; Section 204 of the Act limits the Adjustment Board's

jurisdiction to disputes "referred by petition". Pursuant to Section 29(E),(G) of the Agreement, the Adjustment Board can only consider desputes properly submitted to it in written petition by the President of Allied (Petition,23). Under Section 29(A), (E),(G) of the Agreement and Section 204 of the Act, demands by a grievant and allegations set forth by Allied's attorney in his opening remarks before the Adjustment Board are not contractually or statutorily proper grievance submissions and; therefore, outside the Adjustment Board's consideration and jurisdiction. Allied's President unequivocally set forth the sole "Question at Issue"(dispute) in his written petition to the Adjustment Board, as well as setting forth the limits of the Adjustment Board's jurisdiction, by quoting Section 29(E). (Petition,23)

ARGUMENT

A. THE PROPER ADMINISTRATION AND ENFORCEMENT OF THE RAILWAY LABOR ACT REQUIRES THE GRANT OF CERTIORARI HERE.

Federal courts may assume breach-of-contract jurisdiction over an employer, when employer's conduct amounts to repudiation of the remedial procedures contained in the collective bargaining agreement--regardless of whether the union breaches its duty of fair representation, VACA v SIPES, 386 U S 171, 185 (1967). The Ninth Circuit and the district court failed to apply the VACA employer repudiation exception to the facts in this case. See Petition, 27-28, 37-41.

Proper application of the exceptions to the doctrine requiring the exhaustion of contractual remedial procedures to breach-of-contract suits under the Railway Labor Act is of very real importance to the hundreds of thousands who are employed in the airline/railway industry. Proper administration of the Railway Labor Act cannot be

achieved, so long as the federal courts refuse to apply VACA to breach-of-contract suits under the Act.

Granted a review of the facts will be required to determine whether American repudiated the contractual remedial procedures; but the facts here are simply the vehicle by which this Court can insure that workers governed by the Railway Labor Act are not deprived of this obvious exception to the doctrine requiring the exhaustion of contractual remedial procedures.

B. A JURY TRIAL IS REQUIRED ON THE ISSUE OF WHETHER ALLIED PILOTS ASSOCIATION BREACHED ITS DUTY OF FAIR REPRESENTATION.

Respondents' argument that Allied fulfilled its obligation to petitioner by having the Adjustment Board acknowledge that the Agreement contained a five year medical reinstatement provision is illtaken. Reinstatement under such provision was unavailable to the petitioner, because he had already been permanently discharged; it was

also unavailable, because Allied breached its obligation to enforce petitioner's contractual rights by ignoring his June 7, 1973 discharge and his attempts to dispute such discharge through the contractual remedial procedures.

Whether Allied's refusal to "argue" for petitioner's reinstatement, without so advising petitioner, was arbitrary, discriminatory or in bad faith is a question for a jury. The Ninth Circuit deciding such an issue, which goes to the hart of the litigation, by summary judgment so far departs from the accepted and usual course of judicial proceedings as to invoke this Court's power of supervision. Rule 17.1. (a), Rules of the Supreme Court. See also VACA v SIPES, 386 U S 171 (1967).

C. FAILURE TO PUBLISH AN APPELLATE DECISION DOES NOT MAKE IT ANY LESS IN CONFLICT.

One of the prime purposes of the certiorari jurisdiction is to bring about uniformity of decisions on matters of federal

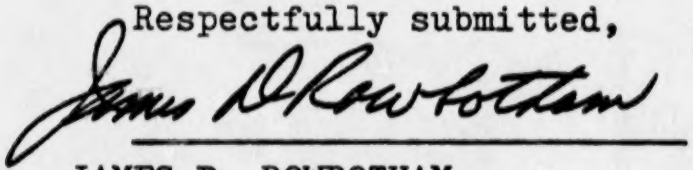
law amoung the federal courts of appeal. Rule 17.1.(a), Rules of the Supreme Court. The Supreme Court is to insure that litigants are treated uniformly in the circuit courts.

Respondents' agrument essentially is that the decision below can be grossly in conflict with decisions of other appellate courts but if it is not published, it is of no concern to this Court. Absurd!

CONCLUSION

The petition should be granted.

Respectfully submitted,



JAMES D. ROWBOTHAM
4028-14 Farm Hill Blvd.
Redwood City, CA 94061
(415) 365-7910
Petitioner In Pro Per

January 1, 1981

APPENDIX A

Section 204, TITLE II, of the Railway Labor Act reads, in pertinent part:

The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of interpretation or application of agreements concerning rates of pay, rules or working conditions...shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with full statement of the facts and supporting data bearing upon the disputes.

CERTIFICATE OF SERVICE

I hereby certify that on the 2 day of January, 1981, I served the within PETITIONER'S REPLY BRIEF on the interested parties in this action, by placing three true and correct copies in each of two sealed envelopes, with postage thereon fully prepaid, in the United States mail at Redwood City, California, addressed as follows: Solicitor General, Department of Justice, Washington, D.C. 20530,
Brobeck, Phleger & Harrison, One Market Plaza, San Francisco, CA 94105.

I CERTIFY under penality of perjury that the foregoing is true and correct, EXECUTED ON January 2, 1981 in Redwood City, California.

James D Rowbotham

JAMES D. ROWBOTHAM